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PETITIONER RONALD DWAYNE WHITFIELD'S

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

98 9085

The Petitioner, Ronald Dwayne Whitfield, asks for leave to file the attached Petition for Writ of Certiorari without prepayment of costs and to proceed in forma pauperis. The Petitioner has previously been granted leave to so proceed in the trial Courts below. The Petitioner's affidavit in support of this motion is attached hereto.

Supreme Court, U.S.
FILED
APR 12 1999
OFFICE OF THE CLERK

Respectfully,

/S/ Ronald Dwayne Whitfield
RONALD DWAYNE WHITFIELD
PRO SE, #623668

RECEIVED
APR 16 1999
OFFICE OF THE CLERK
SUPREME COURT, U.S.

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Ronald Whitfield, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$ 0	$ 0	$ 0	$ 0
Self-employment	$ 0	$ 0	$ 0	$ 0
Income from real property (such as rental income)	$ 0	$ 0	$ 0	$ 0
Interest and dividends	$ 0	$ 0	$ 0	$ 0
Gifts	$ 0	$ 0	$ 0	$ 0
Alimony	$ 0	$ 0	$ 0	$ 0
Child Support	$ 0	$ 0	$ 0	$ 0
Retirement (such as social security, pensions, annuities, insurance)	$ 0	$ 0	$ 0	$ 0
Disability (such as social security, insurance payments)	$ 0	$ 0	$ 0	$ 0
Unemployment payments	$ 0	$ 0	$ 0	$ 0
Public-assistance (such as welfare)	$ 0	$ 0	$ 0	$ 0
Other (specify): NONE	$ 0	$ 0	$ 0	$ 0
Total monthly income:	$ 0	$ 0	$ 0	$ 0

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE	N/A	N/A	$ 0
NONE	N/A	N/A	$ 0
NONE	N/A	N/A	$ 0

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE	N/A	N/A	$ N/A
NONE	N/A	N/A	$ N/A
NONE	N/A	N/A	$ N/A

4. How much cash do you and your spouse have? $ 0
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
NONE	NONE	$ 0	$ 0
NONE	NONE	$ 0	$ 0
NONE	NONE	$ 0	$ 0

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value NONE

☐ Other real estate
Value NONE

☐ Motor Vehicle #1
Year, make & model NONE
Value 0

☐ Motor Vehicle #2
Year, make & model NONE
Value 0

☐ Other assets
Description NONE
Value 0

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
NONE	$ 0	$ 0
NONE	$ 0	$ 0
NONE	$ 0	$ 0

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
NONE	NONE	NONE
NONE	NONE	NONE
NONE	NONE	NONE

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	$ NONE	$ NONE
Are real estate taxes included? ☐ yes ☐ no		
Is property insurance included? ☐ yes ☐ no		
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 0	$ 0
Home maintenance (repairs and upkeep)	$ 0	$ 0
Food	$ 0	$ 0
Clothing	$ 0	$ 0
Laundry and dry-cleaning	$ 0	$ 0
Medical and dental expenses	$ 0	$ 0

Transportation (not including motor vehicle payments)	$ 0	$ 0
Recreation, entertainment, newspapers, magazines, etc.	$ 0	$ 0
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ 0	$ 0
Life	$ 0	$ 0
Health	$ 0	$ 0
Motor Vehicle	$ 0	$ 0
Other: NONE	$ 0	$ 0
Taxes (not deducted from wages or included in mortgage payments) (specify): NONE	$ 0	$ 0
Installment payments		
Motor Vehicle	$ 0	$ 0
Credit card(s)	$ 0	$ 0
Department store(s)	$ 0	$ 0
Other:	$ 0	$ 0
Alimony, maintenance, and support paid to others	$ 0	$ 0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ 0	$ 0
Other (specify): NONE	$ 0	$ 0
Total monthly expenses:	$ 0	$ 0

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ yes ☑ no If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ yes ☑ no

If yes, how much? NONE

If yes, state the attorney's name, address, and telephone number:

11. Have you paid – or will you be paying – anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ yes ☑ no (U/A)

If yes, how much? ~~0~~

If yes, state the person's name, address, and telephone number: U/A

12. Provide any other information that will help explain why you cannot pay the costs of this case.

(I HAVE NO FAMILY AND NO FRIENDS, NONE WHATSOEVER. I MUST GET OUT OF PRISON AND PROVE TO MYSELF I CAN BE SOMEONE LIKABLE & I KNOW I CAN PROVE PEOPLE WRONG ABOUT ME BEING BORN TO LOSE.)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: APril 19, 1999

Ronald Whitfield

(Signature)

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D 99-

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

Supreme Court, U.S.
DEC 12
OFFICE OF THE CLERK

October Term, 1999

RONALD DWAYNE WHITFIELD, PETITIONER
V.
STATE OF TEXAS, RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO THE
TEXAS COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS

PETITION FOR WRIT OF CERTIORARI

RONALD DWAYNE WHITFIELD
TDCJ-ID #623665, PRO SE
Route 2, BOX 4900
Gatesville, Texas 76597

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Black's Law Dictionary, Sixth Edition, 1990 3,

Texas Board of Pardons and Paroles Rules 143.52 and 143.58 viii

QUESTIONS PRESENTED Whitfield v. Texas

(This time I shall present the questions right.)

QUESTION NO. 1: Does "[g]ood cause exist[] for hearing second writ of habeas corpus, where first writ raises issue that, through no fault of applicant's own, is not adjudicated. Ex Parte Barber (Cr. App. 1994) 879 S.W. 2d 889, rehearing denied, certiorari denied 115 S.Ct. 739, 513 U.S. 1084, 130 L. Ed. 2d 641[]"?

QUESTION NO. 2: Does "[g]ood cause exist[] for hearing second writ of habeas corpus where point of error has been previously raised by applicant in writ of habeas corpus but was not decided upon by Court, and is again raised in subsequent writ. Ex Parte Barber (Cr. App. 1994) 879 S.W. 2d 889, rehearing denied, certiorari denied 115 S.Ct. 739, 513 U.S. 1084, 130 L. Ed. 2d 641[]"?

QUESTION NO. 3: Will a "[s]econd writ of habeas corpus [] not be considered to be abuse if applicant can show cause for raising new point after one writ of habeas corpus has already been filed. Ex Parte Barber (Cr. App. 1994) 879 S.W. 2d 889, rehearing denied, certiorari denied 115 S.Ct. 739, 513 U.S. 1084, 130 L. Ed. 2d 641[]"?

QUESTION NO. 4: Based upon the questions presented above & therefore, did not the Texas Court of Criminal Appeals err when the judges thereof for Writ NOS 25,869-21, 25,869-22, and 25,869-23 "dismissed without written order the subsequent application[s] for writ of habeas corpus [pursuant to] Art. 11.07, Sec. 4, V.A.C.C.P."?

B

NO. 99-

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

October Term, 1999

RONALD DWAYNE WHITFIELD, PETITIONER

VS.

STATE OF TEXAS, RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO THE
TEXAS COURT OF CRIMINAL APPEALS

Petitioner, Ronald Dwayne Whitfield, respectfully prays that a writ of certiorari issue to review the orders in writ numbers 25,869-21, 25,869-22, and 25,869-23 for which "dismissed without written order[s] the subsequent application[s] for writ of habeas corpus. See Art. 11.07, Sec 4, V.A.C.C.P."

ORDERS BELOW

The orders for review of the Texas Court of Criminal Appeals are unreported; however, they are appearing in Appendix "A".

JURISDICTION

The Texas Court of Criminal Appeals' Orders in these matters were delivered on February 3, 1999. No Petition for rehearing was filed. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution Sixth and Fourteenth Amendments are involved.

The State of Texas Constitution Articles 1, 4 and 5 Sections 5, 10, 11 and 19 are involved.

V.A.C.C.P. arts. 1.13, 1.14, 1.15 and 11.07, §§ 3 and 4 are involved.

The Texas Court of Criminal Appeals had jurisdiction to issue writ of habeas corpus pursuant to V.A.C.C.P. art. 11.07, § 5 and Article 5, Sec. 5 of the Texas Constitution.

PREAMBLE

Certiorari: Lat. To be informed of. A writ of common law origin issued by a superior to an inferior Court requiring the latter to produced a certified record of a particular case tried therein. The writ is issued in order that the Court issuing the writ may inspect the proceedings and determine whether there have been any irregularities. It is most commonly used to refer to the Supreme Court of the United States, which uses the writ of certiorari as a discretionary device to choose the cases it wishes to hear. See 28 U.S.C. § 1254. The Supreme Court denies most writs of certiorari (i.e. "cert. den."). The trend in State practice has been to abolish such writ.

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See also W. of Certiorari

Writ of Certiorari: An order by the appellate Court which is used by that Court when it has discretion on whether or not to hear an appeal from a lower Court. If the writ is denied, the Court refuses to hear the appeal and, in effect, the judgment below stands unchanged. If the writ is granted, then it has the effect of ordering the lower Court to certify the record and send it up to the higher Court which has used its discretion to hear the appeal. See also Certiorari

In the U.S. Supreme Court, a review of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. 28 U.S.C. §§ 1254, 1257; Sup Ct. Rules 10 et seq.

Black's Law Dictionary, 6th Edition, 1990, by West Publishing Co.

STATEMENT OF THE CASE

Petitioner would like for this Court to be informed that on May 10 and 11 of 1995, for the first time ever, he presented to the State Court trial judge, in a single application filed by the Clerk, Claims Challenging both Cause Numbers 525468 and 528856 — a post-conviction proceeding, V.A.C.C.P. art 11.07, § 3.

CAUSE NO 528856

Accordingly, Petitioner contends before this Court that were it to grant certiorari in this case ordering the Texas Court of Criminal Appeals

16 to certify the record and send it to this Court, a review or inspection of the record would reveal that in this very first said application, Petitioner did claim as follows:

"[He] was never adjudicated on [cause No.] 528856 [and that] [h]e was just given the conviction [and that Applicant's] conviction is [] unlawful because he has a right to a trial [by either a judge or a jury], the Court cannot just give a defendant a [new] conviction after it revokes a defendant's probation 'based on this 5 yrs'."

A further review or inspection of the record would reveal that after the State trial judge so adopted the State Respondent's Proposed Order, recommending that all relief to Petitioner be denied and after the trial judge ordered the clerk to forward the record to the Texas Court Of Criminal Appeals to dispose of Petitioner's said application, the Texas Court of Criminal Appeals entered the following order:

> Applicant contends, *inter alia*, that his trial counsel was ineffective in failing to investigate in that such investigation would have revealed that the acts allegedly committed by applicant showed only that he removed paneling from a vehicle, not that he entered it.

Accordingly, as soon as Petitioner received a copy of the said Order, he filed in both the trial Court and the Texas Court of Criminal Appeals no less than 15 supplementals and affidavits of not

17 only bringing the Texas Court Criminal Appeals' attention that the Court had misapprehended his claim, but also claimed that as he was denied his right to trial by a judge or by a jury / he was also denied his Sixth Amendment right to counsel and claimed that the attorney's name reflected thereon the judgment in the Cause did not exist and never had.

CAUSE NO. 525468

Accordingly, Petitioner contends before this Court that were it to grant certiorari in this case ordering the Texas Court of Criminal Appeals to certify the record and send it up to this Court, a review or inspection of the record would reveal that in supplementals and affidavits to his very first said application Petitioner did contend while the application was still pending that his probation was unlawfully revoked as he was denied his right to trial lawyer at his revocation hearing since the attorney's name reflected thereon the judgment in Cause did not exist and never had.

CAUSE NO 617718

Accordingly, Petitioner contends before this Court that were it to grant certiorari in this case ordering the Texas Court of Criminal Appeals to certify the record and send it up to this Court, a review or inspection of the record would reveal that he has filed a second, third, fourth, and fifth application for

writ of habeas corpus. In the aid fifth application, Petitioner claimed that his conviction and sentence are unlawful because the indictment in said Cause contains Cause NO. 528856 which, as an enhancement paragraph, was used to both impeach him and to enhance his sentence and said Cause obtained the conviction in violation to his right to Counsel since the attorney's name reflected ~~on~~ thereon the judgment in Cause NO. 528856 did not exist and never had.

REASON FOR GRANTING THE WRIT

CAUSE NO. 528856

Certiorari should be granted for the following reasons:

Because just like in Ex Parte Barber, 879 S.W.2d 889 (Tex. Crim. App. 1994). "[G]ood Cause exists for hearing second writ of habeas corpus, where first writ raises issue that, through NO fault of applicant's own, is not adjudicated." In other words, "[G]ood cause exists for hearing second writ of habeas corpus where point of error has been previously raised by applicant in writ of habeas corpus but was not decided upon by the Court, and is again raised in subsequent writ." *Id.*, *Barber* at 889.

Since a claim made by an accused that he has unlawfully been denied of his right to a jury trial and counsel and that although the judgment in the Cause reflects that he received counsel but where the Petitioner claims otherwise /

19 it would appear, in addition to reasons so stated above, that prehaps these "are special and important reasons therefor" granting the writ.

REASON FOR GRANTING THE WRIT

CAUSE NO 525968

Certiorari should be granted for the following reasons:

Because just like in Ex Parte Barber, 879 S.W 2d 889 (Tex Crim App 1994), "[g]ood cause exists for hearing second writ of habeas corpus, where first writ raises issue that, through no fault of applicant's own, is not adjudicated." In Other words, "[g]ood cause exists for hearing second writ of habeas corpus where point of error has been previously raised by applicant in writ of habeas corpus but was not decided upon by the Court, and is again raised in subsequent writ." *Id, Barber* at 889.

Since a claim made by an accused that he has unlawfully been denied of right to counsel in a probation revocation hearing and although the judgment revoking probation reflects that he receNed Counsel but where the Petitioner claims otherwise, it would appear, in addition to the reasons so stated above, that prehaps these "are special and important reasons therefor" granting the writ.

REASON FOR GRANTING THE WRIT

CAUSE NO. 617718

Certiorari should be granted for the following reasons:

Because just like in EX Parte Barber, 879 S.W. 2d 889 (Tex. Crim. App. 1994), a "[S]econd writ of habeas corpus will not be considered to be abuse if applicant can show cause for raising new point after one writ of habeas corpus has already been filed."

Since a claim made by an accused that his conviction and sentence are unlawful be the indictment in the Cause contains an enhancement paragraph that was used for both impeachment and enhancement purposes but that said enhancement paragraph was a conviction obtained in violation to Petitioner's right to counsel since the attorney's name reflected on the judgment in said enhancement paragraph did not exist and never had. it would appear, in addition to the reasons so stated above, that perhaps these " are special and important reasons therefor " granting the writ.

CONCLUSION

WHEREFORE, THESE PREMISES CONSIDERED, and in the light of the fact that the Petitioner has even moved for a commutation of sentence, a copy of which is attached, and that the State governmental officials will not even so act upon it, Petitioner respectfully prays that he be not made to serve 35 years in

21 Prison, servin' such a senter day-for-day, without any good time and any work time; without any love, trust and understanding from his entire family; made to serve a sentence that, once discharsed, he would be 60 years old; having misused his opportunity to get married and raise a child—an opportunity to prove to those who know him that he was not "born to lose" but will get out of prison, record an album to "be somebody" Other than a Criminal.

Respectfully,

/s/ Ronald Dwayne Whitfield

RONALD DWAYNE WHITFIELD
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Gatesville, Texas 76597

APPENDIX "A"